84-607

No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,
Petitioner,

v.

PASQUALE PETRAMALE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. May an international union acting in good faith be held liable under LMRDA § 101(a)(2) for the discipline of a member imposed by one of its affiliates based solely on the international union's decision denying in part the member's internal union appeal therefrom?

2. Pursuant to established reasonable rules pertaining to the conduct of union meetings authorized by LMRDA § 101(a)(2), may a union lawfully discipline a member for disruptive conduct, including a profane verbal outburst unrelated to the "business properly before the meeting"?

PARTIES TO THE PROCEEDINGS BELOW

Pasquale Petramale;

Local 17, Laborers' International
Union of North America;

Laborers' International
Union of North America;

Anthony Galietta, Individually and
as President of Local 17;

Lawrence T. Diorio, Individually and
as Secretary-Treasurer of Local 17;

And Lorenzo Diorio, Individually and
as Business Manager of Local 17

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PASQUALE PETRAMALE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Laborers' International Union of North America, AFL-CIO, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on May 29, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 736 F.2d 13. The Court of Appeals' decision denying Petitioner's request for rehearing and rehearing *en banc* is unpublished. Both are reprinted in the appendix hereto. No opinion was rendered by the District Court for the Southern District of New York.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on May 29, 1984. A timely petition for rehearing *en banc* was denied on July 16, 1984, and this petition for certiorari was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2):

> **Freedom of speech and assembly.**—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

STATEMENT OF THE CASE

This case arises out of discipline imposed by Local 17, Laborers', on one of its members, plaintiff/respondent Pasqual Petramale, for his disruptive conduct during a regular membership meeting of Local 17 on August 29, 1980. Petramale appealed this disciplinary decision to petitioner, Laborers' International Union of North America ("LIUNA"), the parent labor organization with which Local 17 is affiliated.

During the August 29, 1980 Local 17 membership meeting, Petramale became involved in fisticuffs with other members after which he interrupted the presentation of a union officer's report and delivered the following verbal outburst as described in the Local Union meeting minutes:

> Br. Pat Petramale stated from the back of the meeting Hall that all three of you are crooks, referring to the three Delegates on the rostrum. All the fucking Officers are crooks. The whole fucking Union and International is crooked, and Br. Reed and Br. Curry Naming the Election Committee are fucking liars. Fuck you all, you laborers deserve these people. I'm getting out of this fucking Union. They took all your money.

Union disciplinary charges were filed by three local union officers, who were defendants below, against Petramale. Their charges alleged that Petramale had violated the Local Union's Constitution:

> The specific instances I am referring to are on August 29, 1980 at the Regular Monthly Membership Meeting Brother Petramale violated Section 3 under Art. III:
>
> (f) by conducting himself in such a manner as to interfere with the proper and orderly conduct of business of the local union by using vulgar and profane language and slanderous statements and accusations against the officers of the local union and the international union.
>
> (g) by willfully slandering the officers of the local union and the international union by circ lating false reports and gross misrepresentations about their honesty at the regular membership meeting.
>
> Brother Petramale slandered the officers in the Middletown Record August 31, 1980 by stating that the election was corrupt and fixed and also when he claimed that outbreak of violence was set up by the union leadership.

After conducting a hearing at which Petramale appeared and participated, Local 17's Trial Board found Petramale "guilty of all charges," fined him $1500 and suspended him from attendance at union meetings for a period of ten years. Pursuant to the Local Union's Constitution, this Trial Board decision was subsequently reviewed and approved by Local 17's membership at a regular membership meeting.

Pursuant to the Union's Constitution, Petramale then appealed to LIUNA. A hearing was conducted which Petramale did not attend notwithstanding his receipt of notice thereof. After considering Petramale's written appeal, LIUNA eliminated the $1,500 fine and reduced from ten to two years the period of his suspension from attending Local 17 membership meetings. Upon a subsequent request of Local 17, LIUNA amended its decision to limit Petramale's suspension to the meetings which had already passed.

Petramale instituted this action under § 102 of LMRDA, 29 U.S.C. § 412, claiming that he had been disciplined in violation of his statutory rights of free speech as provided in § 101(a)(2) of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(2). Named as defendants were Local 17, its three principal officers and LIUNA. Petramale sought injunctive and declaratory relief in addition to damages.

At trial, the district court charged the jury that it should find for Petramale if it concluded that he was disciplined for his expression of views and opinions but that it should find for all defendants if it found that Petramale had been disciplined for violating union rules regulating the time, place and manner of speech. The district court also instructed the jury that it was to find in favor of LIUNA if it determined that LIUNA had not "actually participated in or ratified the wrongful actions

of the Local Union [in disciplining Petramale]." The jury entered a general verdict in favor of all defendants.

Petramale appealed to the Second Circuit, which concluded that: "The record is . . . clear beyond dispute that Local 17 and LIUNA inextricably lumped disruption and slander together as undifferentiated conduct, subjecting Petramale to Union discipline." The Court of Appeals held that "[a] union may not validly discipline a member upon charges and a record which include accusations against union officers as an essential element." The Court's opinion then concluded that the district court erred by failing to instruct the jury that "when discipline is imposed on a number of grounds, one of which involves protected speech, the discipline is unlawful." Finally, the Court of Appeals found that the discipline was illegal as a matter of law and that Petramale was entitled to a directed verdict on liability. The opinion did not differentiate between the role played by LIUNA, Local 17, or the individual defendants, nor did it consider separately whether LIUNA, under the facts of this case, could be held liable.

LIUNA then filed a timely petition for rehearing and suggestion for rehearing *en banc* on the grounds that the Court of Appeals: (1) overlooked those principles which preclude the imposition of liability on a parent labor organization for the acts of its affiliates and (2) failed to apply this Court's reading of § 101(a)(2) regarding a union's right to adopt and enforce reasonable rules governing members' conduct as set forth in *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982). Without comment, the Court of Appeals denied LIUNA's petition for rehearing on July 16, 1984.[1]

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[1] The Second Circuit remanded the case to the trial court with the instructions that if Petramale moved for a directed verdict, it was to be granted. Thus, only Petramale's claims for damages and legal fees remain to be adjudicated. Further proceedings will not alter or amend the appellate court's holding on the

ARGUMENT

I. THE COURT OF APPEALS' DECISION IMPOSING LIABILITY ON THE INTERNATIONAL UNION CONFLICTS WITH PRINCIPLES OF LAW ALREADY ESTABLISHED BY THIS COURT

In *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 393-396 (1922) ("Coronado Coal I"), this Court held that an international union is a separate legal entity from its affiliated subordinate bodies and that, like a corporation, it cannot be held liable for the acts of others, including its affiliates, except pursuant to the normal principles of agency. The Court has repeatedly reaffirmed that holding. *E.g., Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295, 304-305 (1925); *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966); *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 217-18 (1979).

The decision of the Court of Appeals failed to differentiate between the involvement of LIUNA and that of Local 17 in this case and simply imposed joint liability upon both LIUNA and Local 17 because it found that the discipline of Petramale violated § 101(a)(2) of LMRDA. However, LIUNA did not initiate or authorize the original charges against Petramale nor did it participate in the Local 17 Trial Board proceedings. The decision to discipline Petramale was made by the Local 17 Trial Board and was adopted by the membership of Local 17. The discipline affected only Petramale's status with Local 17, not with LIUNA, and LIUNA took no action to enforce the discipline. Indeed, after its hearing and not-

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substantial issues raised herein. Petramale's claim for compensatory and punitive damages will, however, require a trial which would essentially duplicate the original proceeding. Review at this time will enable this Court to address critical legal issues whose posture will not be affected by any further proceedings in the trial court and will substantially aid the judicial administration of this case by obviating the need for a further trial.

withstanding Petramale's failure to appear, LIUNA eliminated his fine altogether and reduced his suspension from attending meetings from ten years to two years. Thus, the Court of Appeals' imposition of liability on LIUNA cannot be justified on the ground that Petitioner directly disciplined Petramale.

LIUNA's participation in the disciplinary proceedings was limited to performing its internal union appellate review function. Assuming *arguendo* that the discipline was unlawful, the Court of Appeals' imposition of liability on Petitioner is justified only if it had an affirmative duty to go beyond its appellate decision, which was substantially in Petramale's favor, and instead to set aside completely Local 17's discipline.[2] By imposing such a duty on LIUNA, the Court of Appeals' decision conflicts with the principles set forth by this Court in *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979) and *United Mine Workers v. Coronado Coal Company*, 259 U.S. 344 (1921) and by the Sixth Circuit in *Shimman v. Frank*, 625 F.2d 80, 99 (6th Cir. 1980).

This Court has clearly rejected the argument in the context of collective bargaining that an international union has an affirmative duty to correct the wrongful conduct of its subordinate bodies. *Carbon Fuel Co. v. United Mine Workers, supra*, at 218-19; *Coronado Coal I, supra*, at 395. In *Carbon Fuel*, the Court said:

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[2] As yet, no court acting under Title I of LMRDA has found a union's internal appellate process a sufficient basis upon which to impose liability under either a participation or ratification theory. *E.g., Smith v. American Federation of Musicians*, 88 L.R.R.M. 2347, 2349 (S.D.N.Y. 1974) (The international union acting "only as an appellant tribunal, did not so control the acts of [its affiliate] as to be held responsible for the consequences of those acts."); *Layne v. International Brotherhood of Electrical Workers*, 96 L.R.R.M. 2959 (D.S.C. 1977); *Eisman v. Baltimore Regional Joint Board of Amalgamated Clothing Workers*, 82 L.R.R.M. 2117 (D. Md. 1972); *Ehrlich v. Maggiore*, 24 A.D.2d 947, 265 N.Y.S.2d 418 (1st Dept. 1965).

> Petitioner makes the distinct argument that we should hold the International liable for its own failure to respond to the locals' strike. In the face of Congress' clear statement of the limits of an international union's legal responsibility for the acts of one of its local unions, it would be anomalous to hold that an international is nonetheless liable for its failure to take certain steps in response to actions of the local. Such a rule would pierce the shield that Congress took such care to construct.

Carbon Fuel Co. v. United Mine Workers, supra, at 217-18.

It has long been recognized that international unions play a beneficial role by restraining improper conduct of their affiliates and members. The labor laws and National Labor Policy encourage them to do so, and therefore, when they attempt to intervene, "they should not for these activities be made to risk liability for such harm as may already have been done." *United Mine Workers v. Gibbs*, 383 U.S. 715, 739 (1966).

The Sixth Circuit has held that the same principles apply under the LMRDA. *Shimman v. Frank*, 625 F.2d 80, 99 (6th Cir. 1980). In *Shimman*, the plaintiff argued that an international union which had knowledge of LMRDA violations perpetrated by local union officials was under an obligation to correct those abuses. The Sixth Circuit noted that despite the fact that Congress does not favor illegal wildcat strikes, this Court in *Carbon Fuel* refused to hold an international liable for failing to take steps to end wildcat strikes instigated by its affiliates. Applying that principle to LMRDA lawsuits, the Sixth Circuit stated:

> We think that the same law should apply here. An International Union which does not authorize, encourage or ratify § 101 violations should not be held liable for them. Otherwise, International Unions could be destroyed by liability findings based on

> hindsight analysis of what they should have done. Like the Supreme Court in *Carbon Fuel Co.*, we will not imply an obligation to act from alleged general duties.

Shimman v. Frank, supra, at 99.

The only other theory that might be advanced to support the Second Circuit's unarticulated rationale for holding LIUNA liable is that of claimed ratification by LIUNA of Local 17's discipline of Petramale. However, the common law principles of ratification fail to provide such a basis. The essential element of common law ratification is that the act to be ratified must be undertaken on behalf of the ratifier. Restatement (Second) of Agency § 85 (1958); 3 Am. Jur. 2d *Agency* § 171 (1962); Mechem Outlines Agency § 212 (1952) (ratification of a tort); *Valaske v. Wirtz,* 106 F.2d 450 (6th Cir. 1939). An act performed on one's own behalf cannot be ratified by another, and "there can be no ratification of a tort by one in whose interest it was not committed." 2A C.J.S. *Agency* § 72(b) (1972). In short, the common law recognizes that one cannot be held liable for the acts of another simply because he or she approves of those acts. Rather, liability will be imposed only where the wrongdoer acts in the interests of the ratifier and the ratifier subsequently adopts those acts as his own.

Here, the discipline was imposed by Local 17 acting in its own interests. There is no allegation that the discipline served any interest of LIUNA. Moreover, it cannot be argued that Local 17 was acting on LIUNA's behalf merely because it was an affiliate of LIUNA since that argument was expressly rejected in *Coronado Coal I, supra,* at 395; *see Carbon Fuel Co. v. United Mine Workers, supra,* at 217-18. Thus, LIUNA's limited denial of Petramale's appeal cannot under common law principles of agency be considered ratification of Local 17's actions.

II. THE IMPOSITION OF LIABILITY ON AN INTERNATIONAL UNION FOR FAILING TO REVERSE THE WRONGFUL DISCIPLINARY ACTION OF AN AFFILIATE SERIOUSLY UNDERMINES THE EXHAUSTION OF INTERNAL UNION REMEDIES AND THUS PRESENTS AN IMPORTANT QUESTION OF FEDERAL LABOR LAW

The Court of Appeals' decision seriously threatens the well-established doctrine of exhaustion of internal union remedies. This doctrine has its statutory roots in § 101(a)(4) of LMRDA, 29 U.S.C. § 411(a)(4),[3] which provides:

> No labor organization shall limit the right of any member thereof to institute an action in any court, . . . *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal . . . proceedings against such organizations or any officer thereof: . . .

Clayton v. United Auto Workers, 451 U.S. 679, 688 n.13 (1981); *N.L.R.B. v. Industrial Union of Marine and Shipbuilding Workers of America*, 391 U.S. 418, 426 (1968).

The exhaustion requirement facilitates and encourages the private resolution of internal union disputes and often conserves judicial resources by either resolving a member's complaint before it reaches the courts or limiting and clarifying the issues to be decided by the courts. *Harris v. Plasterers & Cement Masons, Local 406*, 619 F.2d 1164, 1168-69 (7th Cir. 1980); *Buzzard v. Local Lodge 1040*, 480 F.2d 35, 41-42 (9th Cir. 1973); *Detroy v. American Guild of Variety Artists*, 286 F.2d 75, 79 (2d

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[3] Indeed, the exhaustion of internal union remedies is also required under §§ 201(c), 304(c), 402(a) and 501(b) of the LMRDA, 29 U.S.C. §§ 431(c), 464(c), 482(a) and 501(b).

Cir. 1961) *cert. denied*, 366 U.S. 929 (1961); *see Clayton v. United Auto Workers, supra*, at 692 (exhaustion of internal union remedies with respect to a member's contractual dispute).

The exhaustion requirement is also "rooted in the desire to stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures." *Detroy v. American Guild of Variety Artists, supra*, at 79; *see, Hodgson v. Local 6799, United Steelworkers*, 403 U.S. 333, 339-40 (1971) (Congress intended to encourage unions to remedy election violations themselves.)

This Court has equated the exhaustion of internal union remedies with the exhaustion of administrative remedies. *N.L.R.B. v. Industrial Union of Marine and Shipbuilding Workers of America, supra*, at 426. However, the establishment of internal union appellate procedures to resolve members' complaints is voluntary. *See ibid.* If unions which act in good faith are to face liability for their internal union appellate decisions because a court in reviewing the union's decision reaches a different result "based on a hindsight analysis of what they should have done," *Shimman v. Frank, supra*, at 99, parent unions are likely to be discouraged from establishing and maintaining internal union appellate procedures.

III. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THIS COURT'S HOLDING IN *UNITED STEELWORKERS v. SADLOWSKI*

This case raises important issues regarding the balance struck by Congress in LMRDA § 101(a)(2)[4] between a union member's right of free speech and the union's institutional right to maintain and enforce "reasonable rules" pertaining to the conduct of union meetings. This Court considered an application of this balance

[4] Reprinted above at page 2.

in *United Steelworkers v. Sadlowski*, 457 U.S. 102, 108-19 (1982), and concluded that where a § 101(a)(2) violation was alleged, the statute requires a two stage inquiry, *id.* at 111:

> To determine whether a union rule is valid under the statute, we first consider whether the rule interferes with an interest protected by the first part of § 101(a)(2). If it does, we then determine whether the rule is 'reasonable' and thus sheltered by the proviso to § 101(a)(2).

In *Sadlowski*, the Court was called upon to apply the foregoing two-pronged analysis to the validity of the Steelworkers' "outsider" rule which prevented candidates for union office from accepting contributions from non-members. This Court found the outsider rule to be within the protection of the proviso even though it might adversely affect a protected § 101(a)(2) right. Petitioner submits that the jury was entitled to find that the discipline imposed upon Petramale did not adversely affect any speech right protected under § 101(a)(2) and that, in any event, the discipline was lawful because it arose out of the enforcement of reasonable rules regarding the conduct of union meetings.

The Court of Appeals' decision, however, contains no reference to *Sadlowski* and its analysis fails to consider either whether Petramale's outburst was protected speech under § 101(a)(2) and if protected, whether its restraint was nonetheless reasonable. Instead, the court below overturned a jury verdict in Petitioner's favor and held that any restraint on any activity in which any speech was an element was *per se* a violation of § 101(a)(2). Petitioner submits that certiorari should therefore be granted because the appellate decision thus conflicts with the decision of this Court in *Sadlowski*.

Moreover, this case calls for the application of *Sadlowski* in a particularly important setting: the rights of free speech at a union meeting. Petramale's assertion

that his outburst was privileged is in conflict not only with the union's right under § 101(a)(2) to maintain order but also with the free speech rights of other members. To mediate these competing free speech rights, unions and their members may insist upon normal parliamentary rules of order.[5]

For this reason, Congress treated the exercise of free speech at meetings as a special case which a union might subject to additional restrictions. With respect to union meetings the right of speech extends only to comments "upon candidates in an election of the labor organization or upon any business properly before the meeting." Moreover, in addition to the proviso to § 101(a)(2), which permits a union to adopt and enforce "reasonable rules" generally, § 101(a)(2) further provides that speech at meetings is "subject to the organization's established and reasonable rules pertaining to the conduct of meetings." The extension of *Sadlowski* into the context of union meetings therefore involves a portion of § 101(a)(2) not present in *Sadlowski* and raises an important question of federal labor law which should be resolved by this Court.

1. The first prong of the *Sadlowski* test requires a determination whether the union's action has adversely affected a § 101(a)(2) free speech right. The present case raises that question in a significant context because it stands at the boundary of those utterances for which § 101(a)(2) coverage might be claimed. The trial testimony presented to the jury was to the effect that after engaging in a scuffle with other members, Petramale interrupted the regular order of business to let loose with a barrage of invective, profanity and abuse directed both toward the officers and other members of the Local

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[5] Indeed, the Local's Constitution directs that "generally accepted Parliamentary procedure shall prevail at all meetings of the Local Union."

Union which brought the Local Union to the edge of disorder, anarchy and possible violence.

Petramale's remarks did not come even facially within the coverage of interests protected by § 101(a)(2). Petramale admitted that without recognition from the chair he interrupted the presentation of an officer's report. That report concerned union business unrelated to his accusations of alleged dishonesty of the local union's officers or the alleged unfairness of the local union officer election held some months before. Since by its terms § 101(a)(2)'s coverage extends only to speech "upon any business properly before the meeting," Petramale's utterance was unprotected *ab initio*. The Court of Appeals' decision, implying to the contrary that § 101(a)(2)'s coverage extends to all speech, whether or not related to the business properly before the union meeting, thus raises an important question of federal labor law meriting review in this Court.

The Second Circuit, however, found it unnecessary to engage in any detailed consideration of whether Petramale's utterances were protected. Relying principally upon its decision in *Salzhandler v. Caputo*, 316 F.2d 445 (2d Cir.), *cert. denied*, 375 U.S. 946 (1963), the court below reaffirmed that as a matter of law unions must permit "the expression of strongly held views in emotional terms," including the use of slander, "vitriol and calumny." Over the years, the Second Circuit's view regarding the scope of utterances protected by § 101(a)(2) has expanded to the point that it now declares "the free speech right of members is almost absolute." *Turner v. Air Transport Lodge 1894*, 590 F.2d 409, 410 (2nd Cir. 1978) (*per curiam*), *cert. denied*, 442 U.S. 919 (1979).

The Second Circuit's all encompassing reading of the statutory language obviously takes it far beyond the category of speech protected by the First Amendment. For example, it could not be seriously contended that any person has a constitutionally protected right to engage in

slander, *Beauharnais v. Illinois*, 343 U.S. 250 (1952), "fighting words," *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), incitement to riot, *Brandenburg v. Ohio*, 395 U.S. 444 (1969), or obscenity, *Roth v. United States*, 354 U.S. 476 (1957). Even where speech admittedly protected by the First Amendment is an element underlying a decision to take adverse action against an employee, that action is not unlawful if justified by other unprotected conduct. *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977).

In *Salzhandler*, however, the Second Circuit summarily dismissed First Amendment analysis as an "analogy" which was "not convincing." 316 F.2d at 449. For public policy reasons found outside the LMRDA legislative history, the *Salzhandler* Court determined instead that speech protected under § 101(a)(2) was far broader than that protected by the First Amendment. *Id.* 449-50.

Although this Court in *Sadlowski* concurred in the view that First Amendment analysis was not controlling, it did so for precisely the opposite reason. Whereas the Second Circuit found § 101(a)(2) broader than the First Amendment, this Court found its protections to be more narrow, 457 U.S. at 111 (emphasis added):

> However, there is absolutely no indication that Congress intended the scope of § 101(a)(2) to be identical to the scope of the First Amendment. Rather, Congress' decision to include a proviso covering 'reasonable' rules refutes that proposition. First Amendment freedoms must not be infringed absent a compelling governmental interest. Even then, any government regulation must be carefully tailored so that rights are not needlessly impaired. *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982). *Union rules, by contrast, are valid under § 101(a)(2) so long as they are reasonable; they need not pass the stringent test applied in the First Amendment context.*

The Second Circuit's absolutist view of the protections afforded by § 101(a)(2) is therefore in direct conflict

with the teaching of *Sadlowski* and merits this Court's review.

2. The second prong to this Court's *Sadlowski* analysis requires a court to determine, assuming that a union's action interferes with protected speech, "whether the rule is 'reasonable' and thus sheltered by the proviso to § 101(a)(2)." 457 U.S. at 111. In the present case, the the inquiry must be expanded to include consideration of the additional statutory directive that a member's right of speech is further "subject to the organization's established and reasonable rules pertaining to conduct at meetings."

The court below did not specifically consider whether the discipline imposed against Petramale was reasonable. It held, however, that "[u]nions which institute disciplinary proceedings against members have no legitimate interest in making charges which allege protected conduct as an element and in creating a record in which valid charges—disruptive conduct—and invalid ones—accusations against union officers—are inextricably intertwined." [6]

A union's right to adopt and enforce reasonable rules as found both in the proviso and in the "subject to" language limiting a member's right of speech at meetings was the result of a specific decision by Congress to reject

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[6] The Second Circuit opinion continues: "If Local 17 and LIUNA intended to discipline Petramale for disruptive conduct other than the accusatory content of his remarks, they should have separated both the charge and the evidence so that subsequent review by a trier of fact in a judicial tribunal was possible." A trade union, however, is made up of laymen not attorneys. *Ritz v. O'Donnell*, 566 F.2d 731, 739 (D.C. Cir. 1977) (a union proceeding is not "a judicial or even agency proceeding" and courts are "not to interfere except on a kind of showing of grievous unfairness"). Thus, the Second Circuit's suggested approach requires unreasonable pleading sophistication from trade unionists and, in effect, denies them their right to prove that the action actually taken was reasonable and therefore lawful as the jury found herein.

a competing proposal by Senator McClellan which would have contained no such limitations and would have made the right of free speech absolute. In *Sadlowski*, this Court recounted the relevant legislative history, 457 U.S. at 110:

> The McClellan amendment was adopted by a vote of 47-46. 105 Cong. Rec. 6492 (1959), 2 Leg. Hist. 1119. Shortly thereafter, Senator Kuchel offered a substitute for the McClellan amendment. This substitute added the proviso that now appears in § 101(a)(2), which preserves the union's right to adopt reasonable rules governing the responsibilities of its members. It was designed to remove 'the extremes raised by the [McClellan] amendment,' 105 Cong. Rec. 6722 (1959), 2 Leg. Hist. 1234 (Sen. Cooper), and to assure that the amendment would not 'unduly harass and obstruct legitimate unionism.' 105 Cong. Rec. 6721 (1959), 2 Leg. Hist. 1233 (Sen. Church). The Kuchel amendment was approved by a vote of 77-14. See 105 Cong. Rec. 6717-6727 (1959), 2 Leg. Hist. 1229-1239. The legislation was then taken up in the House of Representatives. The House bill, which contained a 'Bill of Rights' identical to that adopted by the Senate, was quickly approved. HR 8400, 86th Cong. 1st Sess. 1959), 1 Leg. Hist. 628-633.

Petitioner asserts that the jury was entitled to find that the discipline imposed against Petramale was reasonable. It appears uncontrovertible that a union may reasonably seek to conduct orderly meetings in conformity with normal parliamentary rules. It was equally reasonable for the union to have found that Petramale's conduct was unacceptable. Petramale was involved in a scuffle. Shortly thereafter, he rose without seeking recognition from the chair and interrupted an officer's report. He proceeded with a profane and inflammatory attack against each and every local union member. The Union's discipline was reasonably calculated to secure order at union meetings. As acknowledged by the appel-

late court, LIUNA pointedly did not base its affirmance of the Local Union Trial Board upon that portion of the disciplinary charges based upon certain statements attributed to Petramale in a local newspaper but denied Petramale's appeal solely upon his misconduct at the meeting. Finally, LIUNA approved only that portion of the Trial Board's discipline which debarred Petramale from attending meetings, a result reasonably calculated to prevent future disruption of the same sort.

As the court below noted, union meetings may be fraught with tension, and rival factions may express strongly held views in highly emotional terms. Accordingly, the standards by which a union's efforts to carry on such meetings in an orderly and democratic manner are to be judged raises critical questions of federal labor relations and the protection of rights guaranteed under Title I of the LMRDA. The *per se* approach of the court below ignores these issues. Petitioner respectfully submits that it is incumbent upon this Court to grant this petition in order to vindicate the congressional intent in enacting § 101(a)(2).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Second Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 442 August Term, 1983

(Argued November 28, 1983 Decided May 29, 1984)

Docket No. 83-7483

PASQUALE PETRAMALE,
Plaintiff-Appellant,

v.

LOCAL NO. 17 OF LABORERS INTERNATIONAL UNION OF NORTH AMERICA; LABORERS INTERNATIONAL UNION OF NORTH AMERICA; ANTHONY GALIETTA, individually and as PRESIDENT OF LOCAL NO. 17; LAWRENCE T. DIORIO, individually and as SECRETARY-TREASURER OF LOCAL NO. 17; and LORENZO DIORIO, individually and as BUSINESS MANAGER OF LOCAL NO. 17,
Defendants-Appellees.

[Filed May 29, 1984]

Before: LUMBARD, WINTER and PRATT, *Circuit Judges.*

Appeal from a judgment entered in favor of the defendants in the United States District Court for the Southern District of New York (Irving Ben Cooper, *Judge*) after a jury trial of plaintiff's claims asserted

under the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq.* (1976).

Reversed and remanded.

BURTON H. HALL (Hall, Clifton & Schwartz, New York, New York), *for Plaintiff-Appellant.*

ALAN R. LEWIS (Rider, Drake, Sommers & Loeb, P.C., Newburgh, New York), *for Defendants-Appellees Local No. 17 of Laborers International Union of North America, Anthony Galietta, Lawrence T. Diorio and Lorenzo Diorio.*

JEROME TAUBER (Mary Jill Hanson, Sipser, Weinstock, Harper, Dorn & Leibowitz, New York, New York), *for Defendant-Appellee Laborers International Union of North America.*

WINTER, *Circuit Judge*:

Alleging violations of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 401 *et seq.* (1976), by his local union, its three chief officers and the parent international union, Pasquale Petramale brought this action for a variety of legal and equitable relief. Following a jury trial which resulted in a verdict for the defendants, Petramale appealed on grounds that he was disciplined for engaging in legally protected speech and that the court's instructions to the jury were erroneous.

We reverse and remand.

BACKGROUND

Petramale has been a member of the Local No. 17 ("Local 17") of the Laborers International Union of North America ("LIUNA") for over thirty years. At

relevant times, Local 17's President was Anthony Galietta, its Business Manager was Lorenzo Diorio and its Secretary-Treasurer was Lawrence T. Diorio. These officers, Local 17 and LIUNA are the defendants.

It appears that the events in question took place against a background of bad feeling between rival factions within Local 17. At Local 17's regular meeting on August 29, 1980, a member by the name of Anthony DuBaldi attempted to question his prior suspension from union activities but was refused permission to speak. Petramale raised his hand, was recognized by the chair and urged to no avail that DuBaldi be allowed to speak. DuBaldi subsequently became involved in a scuffle with another member. When Petramale left his seat to help, he was confronted by other members and an altercation resulted. The regular business of the meeting was interrupted by these events, and the police were called. After order was restored, Petramale stood up and spoke again, this time without recognition. The minutes of the meeting state:

> Br. Pat Petramale stated from the back of the meeting Hall that all three of you are crooks, Referring to the three Delegates on the rostrum. All the fucking Officers are crooks. The whole fucking Union and International is crooked, and Br. Reed and Br. Curry Naming the Election Committee are fucking liars. Fuck you all, you laborers deserve these people. I'm getting out of this fucking Union. They took all your money.

Petramale then walked out of the meeting. At trial, he conceded that his remarks were critical of union officials but denied use of any expletives.

Two days later, on August 31, 1980, a local newspaper carried a story about the August 29 meeting. The article stated in part:

> A rift within the local has been widening since the June 20 election. Elections Committee member

Pasquale "Pat" Petramale, of Kingston, called this election "corrupt and fixed" while he spoke on the floor of the meeting Friday night.

* * * *

Petramale, a former supporter of DiOrio who testified against him during the election dispute, claimed the outbreak of violence was "set up" by the union leadership.

He charged he was laid off from his job as flagman on the Route 9W arterial project at Kingston earlier Friday because of his opposition to DiOrio. Petramale said he has been a union member for more than 30 years.

On September 3, intra-union disciplinary charges were filed against Petramale. The statement of charges read as follows:

September 3, 1980

Brother Victor Garzione
Recording Secretary
L.I.U. of N.A. Local No. 17

This is to inform you that Brother Lorenzo Diorio, Book No. 163400, Brother Lawrence Diorio, Book No. 163957, Brother Anthony Galietta, Book No. 163766 all members in good standing in Local No. 17 are preferring charges against Brother Patsy Petramale, Book No. 163536 for actions and violations against the officers of the local union and the international union under "Obligations of Members", Section 3 Page 8 of Uniform Local Union Constitution.

The specific instances I am referring to are on August 29, 1980 at the Regular Monthly Membership Meeting Brother Petramale violated Section 3 under Art. III:

(f) by conducting himself in such a manner as to interfere with the proper and orderly conduct of the

business of the local union by using vulgar and profane language and slanderous statements and accusations against the officers of the local union and the international union.

(g) by wilfully slandering the officers of the local union and the international union by circulating false reports and gross misrepresentations about their honesty at the regular membership meeting.

Brother Petramale slandered the officers in the Middletown Record August 31, 1980 by stating that the election was corrupt and fixed and also when he claimed that outbreak of violence was set up by the union leadership.

Respectfully submitted,

/s/ _____
ANTHONY GALIETTA,
Pres.

/s/ _____
LORENZO DIORIO,
Bus.

_____
LAWRENCE T. DIORIO,
Sec.-Treas.

These charges tracked the language of Article III, § 3 of the Uniform Local Union Constitution promulgated by LIUNA and adopted by local 17.[1]

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[1] The relevant subsections of the Uniform Local Union Constitution, Article III, § 3, Obligations of Members, read:

(f) To refrain from attending a meeting or function under the influence of liquor or conducting himself in such a manner as to interfere with the proper and orderly conduct of . . .

A hearing was held by Local 17's Trial Board, at which the minutes and newspaper article were the sole evidence. The Board found Petramale "guilty of all charges," fined him $1500 and suspended him from attendance at union meetings for a period of ten years. This discipline was subsequently approved by the Local's membership. Petramale then appealed to LIUNA. LIUNA's Hearing Panel heard testimony that Petramale was a troublemaker and has been disruptive at the August 29 meeting. It also heard Lorenzo Diorio testify that charges were preferred against Petramale because of his "accusations." The Hearing Panel modified the Trial Board's conclusions by finding only that Petramale's conduct at the August 29 meeting violated Article III § 3(f) and (g), thereby implying that the newspaper article was not a basis for discipline. LIUNA also modified the discipline by rescinding the fine and reducing the suspension to two years. Later, the suspension was reduced to meetings already passed.

Petramale instituted this action claiming that the discipline and union constitutional provisions on which it was based violated his statutory rights of free speech, as provided in Section 101 of the LMRDA, 29 U.S.C. § 411. Plaintiff seeks a declaratory judgment that subsections (f) and (g) of Article III of LIUNA's constitution are unlawful; injunctive relief against the discipline imposed by LIUNA; and damages for emotional suffering and costs. At trial, the district court charged the jury that they should find for Petramale if they concluded

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business . . .; . . . at no time use vulgar or profane language nor make any slanderous statements or accusations toward any member or officer of the Local Union . . .

(g) To refrain from willfully slandering the International Union . . . or Local Union or any officer or member thereof; . . . and from circulating false reports or gross misrepresentations about the honesty of officers or members . . .

In September, 1981, LIUNA amended its constitution to delete the references in subsections (f) and (g) to slanderous statements.

that he was disciplined for his expression of views and opinions but that they should find for the defendants if Petaramale had been disciplined for violating union rules regulating the time, place and manner of speech. The district court declined Petramale's request for an instruction that disciplined imposed for a combination of several charges, one of which involves protected speech, is unlawful. Following a jury verdict for the defendants, Petramale took this appeal, claiming *inter alia* that, because he was disciplined on a combination of allegations, some of which are invalid under the LMRDA, the discipline is invalid. We reverse and remand.

DISCUSSION

We believe that the following two principles of law derived from the LMRDA are dispositive of this appeal: (i) criticism of union officers, even when it amounts to slander, is protected speech under the LMRDA; and (ii) when union discipline is imposed on the basis of a combination of factual allegations an essential element of which is protected speech, the discipline as a whole is invalid under the LMRDA. Because it is clear beyond peradventure that each of the charges leveled against Petramale included as at least one element his slanderous accusations against union officers, the discipline imposed is invalid.

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(2) provides:

> (2) *Freedom of speech and assembly.*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of

> meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

The LMRDA also provides that a union may not "fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions [of the Act]." 29 U.S.C. § 529.

We have previously interpreted these provisions to prohibit unions from disciplining a member for even libelous statements in union meetings criticizing the performance of union officers. *Salzhandler v. Caputo*, 316 F.2d 445 (2nd Cir.), *cert. denied*, 375 U.S. 946 (1963); *see Cole v. Hall*, 462 F.2d 777 (2d Cir. 1972) (malicious vilification of a union officer by a union member is protected speech); *aff'd sub nom Hall v. Cole*, 412 U.S. 1 (1973). We have adopted the view that union meetings, especially those involving election matters or disputes between rival factions within the union, such as those in the instant case, can be fraught with tension and even sparked with "vitriol and calumny," *Salzhandler*, 316 F.2d at 450 n.7 (quoting Summers, American Legislation for Union Democracy, 25 Mod. L. Rev. 273, 287), and that leeway for the expression of strongly held views in emotional terms, even when they amount to slander, must be afforded union members.

However, unions may impose reasonable rules on the membership in the interest of maintaining order at meetings, 29 U.S.C. § 411(a)(2), and a member's right of free speech is subject to reasonable regulations aimed at preventing the disruption of union business. *See Rosario v. Amalgamated Ladies Garment Cutters Union*, 605 F.2d 1228, 1239 (2d Cir. 1979), *cert. denied*, 446 U.S. 919 (1980). Thus, nothing in the LMRDA prohibits a

union from disciplining a member for actual disruption of a meeting.

Defendants argue that discipline was imposed in the instant case solely because Petramale's speaking without recognition and his repeated use of expletives were disruptive in the context of a meeting already interrupted by an altercation necessitating the calling of police. Viewing the evidence in the light most favorable to the defendants, however, it is clear that the findings of both the Local 17 and LIUNA tribunals included slander as an essential element.

Three charges were originally leveled at Petramale. One alleged slanderous remarks reported in the local paper. The LIUNA Hearing Panel in effect dismissed this charge. The second charge alleged slanderous remarks at the August 29 meeting. By explicitly finding that Petramale violated Article III, § 3(g), which forbids slander, false reports or gross misrepresentations about union officers, the LIUNA Hearing Panel sustained this charge. The remaining charge, also sustained by LIUNA, was that Petramale, in violation of Article III, § 3(f), interfered with the proper and orderly conduct of union business "by using vulgar and profane language and slanderous statements and accusations" against union officials. This charge thus unambiguously included as one element speech protected under *Sulzhandler v. Caputo*. In considering Petramale's appeal, the LIUNA Hearing Panel had before it the testimony of Lorenzo Diorio, who repeated the statements made by Petramale at the August 29 meeting and said, "These are his accusations at an open meeting . . . , and that is the basis that we preferred the charges." When asked whether Petramale had been disruptive, the other witnesses before the Hearing Panel all replied in the affirmative but described the disruption in terms of the accusations Petramale made against the officers. The Hearing Panel then sustained Local 17's finding of guilt on this charge.

The record is thus clear beyond dispute that Local 17 and LIUNA inextricably lumped disruption and slander together as undifferentiated conduct subjecting Petramale to union discipline.

We believe that a union may not validly discipline a member upon charges and a record which include accusations against union officers as an essential element. To hold otherwise would seriously undercut the protection offered by *Salzhandler v. Caputo* and substantially chill the exercise of union members' rights by increasing the danger of subterfuge. Unions which institute disciplinary proceedings against members have no legitimate interest in making charges which allege protected conduct as an essential element and in creating a record in which valid charges—disruptive conduct—and invalid ones—accusations against union officers—are inextricably intertwined. If Local 17 and LIUNA intended to discipline Petramale for disruptive conduct other than the accusatory content of his remarks, they should have separated both the charge and the evidence so that subsequent review by a trier of fact in a judicial tribunal was possible. Instead, charges of disruption and slanderous accusations were inextricably merged and the accusations themselves were considered disruptive by the witnesses who testified before the LIUNA Hearing Panel. Both the charges leveled at Petramale and the record created by the union thus included protected speech as an indispensible element. It is altogether cynical now to seek to vary those charges and that record and to ask a trier of fact to draw distinctions which defendants themselves ignored.

Even assuming that precedents under 42 U.S.C. § 1983 are fully applicable in the somewhat different context of the LMRDA, *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977) is easily distinguishable. *Mt. Healthy* held that, where entirely separate incidents cause a municipal employer to discharge an employee and one

such incident involves protected speech, the employer may attempt to persuade the trier of fact that the non-protected incident alone would have resulted in the discharge. *Id.* at 285-87. The instant case raises a considerably different issue since here we have inextricably intertwined charges of disruption and slander arising from a simple, undifferentiated incident. No attempt was made in the course of either Local 17's or LIUNA's proceedings to differentiate between conduct which was disruptive in the usual sense and conduct which was disruptive because it criticized union officers. The allegations of slanderous accusations permeated the entire proceedings. We hold that defendants may not at this late stage seek to disentangle from the web they wove around Petramale one charge which, standing alone, might pass statutory muster.

Given the present record, we need not decide whether the *Mt. Healthy* rule applies to cases arising under the LMRDA. In view of the undifferentiated charges against him, all arising from one simple, undifferentiated incident, Petramale was entitled to an instruction to the jury that, when discipline is imposed on a number of grounds, one of which involves protected speech, the discipline is unlawful. We must, therefore, reverse.

Since further proceedings in the district court are necessary and since it is clear that what we have said *supra* will induce Petramale's counsel to move for a directed verdict, it is appropriate that we go further. Any reasonable jury must conclude on the record established in the Local 17 and LIUNA proceedings that Petramale was disciplined at least in part for speech protected under *Salzhandler v. Caputo.* The discipline was thus illegal as a matter of law and Petramale is entitled to a directed verdict on liability. Since subsections (f) and (g) of Article III, § 3 of the Uniform Local Union Constitution have been deleted, Petramale's claims for declaratory and

injunctive relief against these provisions are moot.[2] His claims for injunctive relief against the discipline imposed by Local 17 are viable, and an appropriate order consistent with this opinion should be entered by the district court on remand. His claims for damages and fees must be adjudicated on the remand.

The judgment is reversed and the case remanded for further proceedings consistent with this opinion.

---

[2] One portion of subsection (g) prohibiting union members from advocating or seeking division of union funds has not been repealed or deleted from LIUNA's constitution. Since that provision was not a basis of the discipline imposed on Petramale, and since Petramale has not demonstrated either by allegation, evidence or argument what effect that provision has on his protected speech, we dismiss his complaint insofar as it relates to the unrepealed portion of subsection (g).

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 16th day of July one thousand nine hundred and eighty-four.

No. 83-7483

PASQUALE PETRAMALE,
Plaintiff-Appellant,

v.

LOCAL NO. 17 OF LABORERES' [sic] INTERNATIONAL UNION OF NORTH AMERICA; LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; ANTHONY GALIETTA, Individually and as President, and LAWRENCE T. DIORIO, Individually and as Secretary-Treasurer of Local No. 17; and LORENZO DIORIO,

Defendants-Appellees.

[Filed July 16, 1984]

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the defendant-appellee, Laborers' International Union of North America,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/ Elaine B. Goldsmith
ELAINE B. GOLDSMITH
Clerk

(2)

84-607

No. 607

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

Petitioner,

vs.

PASQUALE PETRAMALE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

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Attorney for Respondent

13PP

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Where an international union has knowingly, in full awareness of its unlawfulness, ratified and directed the imposition of unlawful discipline upon a member by an affiliated local union, may it be held liable therefor to the member?

The court below held that it may.

2. Where a labor union has unlawfully disciplined a member for expression of views, arguments and opinions, may it nevertheless escape liability therefor on the ground that the member violated parliamentary procedure in the course of expressing such views even though the member was neither (a) charged with any violation of parliamentary procedure nor (b) found guilty by any union tribunal of any such violation, and (c) no evidence of any such violation on his part was before either of the union tribunals that disciplined him for his expression of views?

The court below held that it may not.

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No. 607

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

Petitioner,

VS.

PASQUALE PETRAMALE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

At the membership meeting of Local 17 held on August 29, 1980, a scuffle between two members interrupted the reading of the business manager's report (J.A. 172a, 195a). The Sergeant-at-Arms broke it up and with the assistance of Petramale and others restored order (J.A. 173a, 182a, 205a-206a, 277a, 280a).

After the scuffle was over, but before the business manager resumed his report (J.A. 173a, 174a), at a time when no one else was speaking (J.A. 280a), Petramale, the Respondent here,

stood up and stated in substance that the union's officers were corrupt and had rigged the last election. The Local's minutes, reporting Petramale's remarks, attributed to Petramale use of the expletives "fuck" and "fucking" (J.A. 173a, 225a). Both Petramale and a witness, Biengardo, testified that Petramale did not use either of those, or any other, obscene expressions (J.A. 211a, 282a-283a).

On August 31, 1980, the Middletown *Record*, a newspaper, reported Petramale's opinion that the scuffle at the union meeting was "set up" by the union's leadership (J.A. 133a).

On September 3, 1980, Lorenzo Diorio (Local 17's business manager), his son (the Local's Secretary-Treasurer) and the Local's President, filed disciplinary charges, charging Petramale with interfering with the union's business "by using vulgar and profane language and slanderous statements and accusations against the officers," with "wilfully slandering the officers" and "circulating false reports and gross misrepresentations about their honesty," and with "slander[ing] the officers in the Middletown Record August 31, 1980..." (J.A. 97a).

A trial board of Local 17 subsequently conducted a trial at which it received no testimony at all (Trial Tr. 433) but did receive two documents as evidence in support of the charges (Trial Tr. 437; and J.A. 131a). One of these was the article from the Middletown *Record* (J.A. 133a); the other was an excerpt from the Local's minutes recounting Petramale's criticism of the officers at the meeting (J.A. 132a). On this evidence, the trial board found Petramale guilty "of all charges" and imposed a fine and suspension from attending membership meetings (J.A. 102a).

Petramale appealed to Petitioner ("LIUNA") in January 1981, declaring in his appeal that his comments at the Local meeting were "free speech" and, moreover, "were not slanderous, because they were true" (J.A. 121a-122a). In a follow-up letter on February 10, 1981, he told LIUNA that "[w]hile I... said that the officers... were dishonest, corrupt and that the election was fixed by Diorio and the officers involved, I did not use vulgar or profane language...." He added that "The above mentioned was freedom of speech and was not slanderous, because what I said was true!" (J.A. 110a).

On June 23, 1981, LIUNA's Hearings Panel held an evidentiary hearing. Petramale was not present but Local 17's officers and attorney were, and a transcript was taken (J.A. 134a-157a). At the hearing, the elder Diorio testified as to what Petramale had said at the meeting about the officers and added, "These are his accusations at an open meeting of 144 people, and that is the basis that we preferred the charges" (J.A. 145a). When asked whether the meeting was "disrupted," Diorio replied that "[i]t has been disrupted ever since." Asked to explain, Diorio said that "[t]his guy is up on the floor harassing the President and the officers at every meeting since then" (J.A. 147a).

On that record, LIUNA's Hearings Panel found Petramale guilty (J.A. 114a) and recommended that disciplinary punishment, reduced to a two-year suspension from attending meetings, be imposed. LIUNA's General Executive Board adopted the Panel's Findings and Recommendation (J.A. 113a) and the suspension thereupon went into effect.

Petramale instituted this suit and moved in the District Court to preliminary enjoin his suspension. From denial of his motion, he appealed to the Court of Appeals. While his appeal was pending, Local 17 asked LIUNA to terminate the suspension (J.A. 118a), and LIUNA did so (J.A. 115a). Petramale thereupon withdrew his appeal (J.A.2a) and the case proceeded to trial. From dismissal after trial, Petramale appealed again (J.A. 240a) and the Court of Appeals reversed (Pet.App. 1a-12a).

POINT I.

AN INTERNATIONAL UNION THAT KNOWINGLY RATIFIES OR DIRECTS IMPOSITION OF UNLAWFUL DISCIPLINE UPON A MEMBER IS LIABLE THEREFOR

Those circuits that have passed on the issue are in agreement that, under the LMRDA, where an international union that knowingly ratifies or directs unlawful discipline of a union member by one of its locals, it is liable, along with the local, to the member; *cf. Aguirre v. Automotive Teamsters*, 633 F.2d 168, 174 (9th Cir. 1980); *Allen v. Int'l Alliance of Theatrical Stage Employees*, 338 F.2d 309, 317-318 (5th Cir. 1964). That holding is consistent

with common law principles of agency; *cf. Aguirre v. Automotive Teamsters, supra,* 633 F.2d at 171-173; *Shimman v. Frank,* 625 F.2d 80, 95 (6th Cir. 1980); and see: *Carbon Fuel Co. v. United Mine Workers,* 444 U.S. 212, 216-217 (1979); *Seattle Times v. Seattle Mailer's Union,* 664 F.2d 1366, 1399 (9th Cir. 1983).

It is also consistent with the law decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, regarding approval by an international union of a local union's unlawfully discriminatory bargaining agreement: in such a situation, the international may be held jointly liable with the local union for the unlawful discrimination; *cf. Myers v. Gilman Paper Corp.*, 544 F.2d 837, 851 (7th Cir.) *cert. dism'd sub nom Local 747 v. Myers,* 434 U.S. 801 (1977); *Patterson v. American Tobacco Company,* 535 F.2d 257, 270-271 (4th Cir. 1976); and see: *Sagers v. Yellow Freight System, Inc.*, 529 F.2d 721, 737-738 (5th Cir. 1976); *Kaplan v. IATSE,* 525 F.2d 1354, 1359-1360 (9th Cir. 1975).

In this instance, LIUNA, with full knowledge that Local 17 had disciplined Petramale for his expression of views, arguments and opinions, modified the discipline but, as modified, ratified it and directed that it be imposed upon Petramale.

When it did so, LIUNA had before it:

> (a) the charges themselves, stating Petramale's offense as that of making "slanderous statements and accusations," "circulating false reports and gross misrepresentations," "slander[ing] the officers in the Middletown Record," etc. (J.A. 97a);
>
> (b) the decision of Local 17's trial board, which disciplined Petramale on "all charges," jointly (J.A. 102a);
>
> (c) Local 17's trial board's report, which stated that the charging parties' evidence consisted (entirely) of a newspaper article (J.A. 133a) and a purported account of what Petramale had said at the membership meeting (J.A. 132a);

(d) Petramale's appeal, in which he advised LIUNA that the comments he had expressed at the meeting and to the newspaper reporter were "free speech" and were "true" (J.A. 121a-122a); and

(e) Petramale's follow-up letter of Februrary 10, 1981, in which he reminded LIUNA that the comments he had expressed were "freedom of speech" and were "true" (J.A. 110a).

In addition, LIUNA's Hearings Panel conducted its own evidentiary hearing or trial *de novo*, at which the elder Diorio testified that Petramale's "accusations" against the officers were the sole basis for their charges against Petramale and the entire substance of any "disruption" suffered by the Local.

Plainly, LIUNA was not uninformed, nor did it play a merely passive role in regard to the unlawful discipline. With full knowledge that Petramale's only offense was his expression of views and opinions, LIUNA ratified and approved the disciplinary punishment and directed that, as modified, it be imposed. By ordinary principles of agency, LIUNA is clearly liable for those acts; *cf. Carbon Fuel Co. v. United Mine Workers, supra,* 444 U.S. at 216-217; *Aguirre v. Automotive Teamsters, supra,* 433 F.2d at 174.

POINT II.

THE DISCIPLINE WAS PATENTLY UNLAWFUL

A study of the charges on which Petramale was disciplined by Local 17 and by LIUNA (Pet.App. 4a-5a, J.A. 97a) makes clear that Petramale was disciplined for expressing views and opinions – and not (as LIUNA now contends (Pet. 14))for violating any rules of parliamentary procedure.

So does a review of the evidence presented in support of those charges. The evidence presented to Local 17's trial board consisted entirely of two documents: an extract from the Local minutes purportedly reporting what Petramale had said at the meeting (J.A. 132a) and a newspaper article reporting Petramale's criticism of the union's officers (J.A. 133a). Similarly in regard to LIUNA's Hearings Panel: the evidence before it related entirely to Petramale's expression of views and opinions.

Moreover, neither union tribunal found Petramale guilty of violating that provision of LIUNA's uniform local union contitution that requires members "[t]o observe proper decorum in attending and participating in meetings and functions of the Organization, in accordance with such reasonable rules established by the Organization and generally accepted Parliamentary rules of procedure pertaining to the conduct of meetings and functions" (¶ (e) of Article III, Section 3; J.A. 94a).

On the contrary, LIUNA's Hearings Panel specified in its report (J.A. 114a) that it found Petramale guilty only of violating ¶¶ (f) and (g) of Article III, Section 3, which provisions relate to matters other than parliamentary procedure (J.A. 94a).

LIUNA's present assertion that it disciplined Petramale for some violation of parliamentary procedure is therefore unsupported by the record. The charges fail to specify any such violation. And no evidence of any such violation was presented either to Local 17's trial board or to LIUNA's Hearings Panel. All those tribunals had before them was evidence that Petramale had expressed views, arguments and opinions critical of the officers of Local 17 and of LIUNA. LIUNA's evocation of *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982) (Pet. 12-13) is therefore without a factual basis. Petramale was disciplined, for expression of views and opinions, in clear violation of § 609 of the LMRDA, 29 U.S.C. § 529. *See: Hall v. Cole*, 412 U.S. 1, 7-8 (1973).

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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